IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 188 OF 2005

Tardeo Court Cooperating Housing Society Ltd. ... Appellants.

Versus.

Municipal Corporation of Greater Mumbai. ... Respondents.

Shri Ramesh Jain for the Appellants.

Ms.Geeta Joglekar for the Respondents.

CORAM : ABHAY S. OKA, J.

DATED : 4th April, 2005.

P.C.:

1. Admit. The Respondents waive service.

2. By order dated 28th January 2005 the learned trial Judge has declined to grant interim relief in favour of the Appellants/Plaintiffs.

3. The learned Counsel appearing for the Appellants has brought to my notice order dated 14th December 2004 passed in the earlier suit. In the said order the trial Court noted that the earlier application for regularisation made by the Appellants has been rejected. The trial Court directed that a fresh proposal submitted by the Appellants/Plaintiffs on 26th November 2004 should be considered by the Respondents-Corporation. It appears that the fresh application dated 26th November 2004 was rejected by the Executive Engineer, Building

proposal (City) of the Respondent-Corporation by communication dated 3rd January 2005. It is stated in the said communication that the earlier proposal made by the Appellants was already rejected and that there is an unauthorised construction of the shop below the staircase. The learned Counsel submitted that the very fact that after noting the rejection of the earlier proposal, the trial Court directed the consideration of the fresh proposal dated 26th November 2004, shows that the fresh proposal ought to have been considered on merits. He submitted that the impugned communication dated 3rd January 2005 shows that the proposal is rejected on the ground that the earlier proposal is already rejected.

4. The learned Counsel appearing for the Respondents stated that the fresh proposal submitted on 26th November 2004 was rejected as there is no F.S.I. available. The learned Counsel submitted that there is a compliance with the earlier order passed by the learned trial Judge.

5. After arguing the matter for some time, the learned Counsel appearing for the Respondents on instructions stated that the communication dated 3rd January 2005 will be withdrawn by the Respondents and in compliance with the order dated 14th December 2004, the concerned Officer of the Respondent-Corporation will consider the

application dated 26th November 2004 and pass a fresh order recording brief reasons. The statement made by the learned Counsel for the Respondents is accepted.

6. Hence I dispose of the Appeal by the following order:

(i) The communication dated 3rd January 2005 bearing No.EB/596/D/A is treated as withdrawn.

(ii) The Executive Engineer Building Proposals (City) will pass a fresh order on the Application dated 26th November 2004 in the light of the observations made by the trial Court in order dated 14th December 2004. The order shall be passed within a period of four weeks from today and shall be communicated to the Appellants or their Architects within a period of one week from the date of passing of the order.

(iii) In case the order is adverse to the Appellants the Respondent-Corporation will not take action of demolition for a period of two weeks from the date of communication of the order to the Appellants.

(iv) In view of this order, at this stage no interim relief is required to be granted in favour of the Appellants in the pending suit and accordingly the order dated 20th January 2005 is quashed and set aside and the Notice of Motion No.247 of 2005 stands disposed of. In case the order made by the Respondent-Corporation on the Application dated 26th November 2004 is adverse to the Appellants, liberty to take out a fresh Notice of Motion for seeking appropriate interim relief.

(v) In case the Appellants have carried out any unauthorised construction save and except the disputed office premises, it will be open for the Respondent-Corporation to take appropriate action as regards the said unauthorised construction.

(vi) Appeal from Order is disposed of in the above terms with no order as to costs.

(vii) Parties to act on authenticated copy of this order.

Judge.